UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF WASHINGTON

ALLAH©,	4:19-cv-05178-SAB
Plaintiff,	
v.	**ORDER DENYING MOTION**
	FOR TEMPORARY
DONALD HOLBROOK, et al.,	**RESTRAINING ORDER AND**
Defendants.	**RULE 60(b) MOTION**

On October 10, 2019, this Court denied Allah© leave to proceed *in forma pauperis* based on 28 U.S.C. § 1915(g) and dismissed this action for non-payment of the filing fee. ECF No. 13. Plaintiff is a *pro se* prisoner at the Washington State Penitentiary.

The Court found the Ninth Circuit had acknowledged that Plaintiff is precluded from proceeding *in forma pauperis*. *See Allah v. Sherfey,* No. 2:17-cv-01746-RSM (W.D. Wash. Mar. 7, 2018) (Denial of *in forma pauperis* application based on 1915(g) was appealed [18-35215] and the Ninth Circuit denied the motion to proceed *in forma pauperis* on appeal "because appellant has had three or more prior actions or appeals dismissed as frivolous, malicious, or for failure to state a claim upon which relief may be granted and appellant has not alleged imminent danger of serious physical injury," [18-35215, ECF No. 11], Mandate

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issued Dec. 21, 2018, plus 21 days). ECF No. 7 at 3. The Court certified that any appeal would not be taken in good faith and judgment was entered. ECF No. 13 at 3 and ECF No. 14.

On October 11, 2019, Plaintiff submitted a Motion for Temporary Restraining Order seeking his immediate release from his allegedly false/illegal imprisonment. ECF No. 15. In light of the disposition of this action, the Motion is **DENIED as moot.**

On October 15, 2019, Plaintiff filed a document titled, "F.R.C.P. Rule 60(b)(1) Excusable Neglect, Surprise, Inadvertence," which was construed as a Rule 60(b) Motion. ECF No. 16. Plaintiff asserts that he "has sent a check for $25,405.00 which is coming from the Minnesota Secretary of State Office UCC Division." ECF No. 16 at 1.

The applicable filing fee for a civil rights complaint is $400.00 ($350.00 filing fee plus $50.00 administrative fee). Only the exact amount of the payment can be received by the Clerk of Court. Plaintiff has provided no such payment.

Federal Rule of Civil Procedure 60(b) provides that "[o]n motion and upon such terms as are just, the court may relieve a party...from a final judgment, order, or proceeding for the following reasons: (1) mistake, inadvertence, surprise, or excusable neglect . . ." Relief under Rule 60 "is to be used sparingly as an equitable remedy to prevent manifest injustice and is to be utilized only where extraordinary circumstances exist." *Harvest v. Castro*, 531 F.3d 737, 749 (9th Cir. 2008) (internal quotation marks and citation omitted). The moving party "must demonstrate both injury and circumstances beyond his control." *Id.* (internal quotation marks and citation omitted).

A motion for reconsideration "may *not* be used to raise arguments or present evidence for the first time when they could reasonably have been raised earlier in the litigation." *Kona Enters., Inc. v. Estate of Bishop*, 229 F.3d 877, 890 (9th Cir. 2000) (emphasis in original). Here, Plaintiff has identified no mistake,

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inadvertence, surprise or excusable neglect. The Court finds no reason to reconsider the Order denying leave to proceed *in forma pauperis* and dismissing this action for non-payment of the filing fee under 28 U.S.C. § 1914. Therefore, Plaintiff's construed Rule 60(b) Motion, ECF No. 16 is **DENIED.**

IT IS SO ORDERED. The Clerk of Court is directed to enter this Order and provide a copy to Plaintiff. The file shall remain closed. The Court certifies any appeal of this Order would not be taken in good faith.

DATED this 16th day of December 2019.

Stanley A. Bastian
United States District Judge